

Bill No. 9-03  
Concerning: Development Impact Tax –  
School Facilities  
Revised: 10-27-03 Draft No. 6  
Introduced: April 8, 2003  
Enacted: October 28, 2003  
Executive: November 7, 2003  
Effective: [[September 1, 2003]]  
March 1, 2004  
Sunset Date: None  
Ch. 26, Laws of Mont. Co. 2003

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Councilmembers Perez and Andrews

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**AN ACT** to:

- (1) establish a development impact tax to pay for certain school facilities;
  - (2) phase in the application of the school impact tax;
  - (3) provide for certain exemptions from and credits against the school impact tax;
  - (4) provide for certain uses for revenues from the tax;
  - (5) provide for the collection and use of a School Facilities Payment in certain circumstances; and
- [[ (5) ]] (6) generally amend the law governing impact taxes and the funding of school facilities.

By adding

Montgomery County Code  
Chapter 52, Taxation  
Article XII, Development Impact Tax for Public School Improvements

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

Sec. 1. Chapter 52 is amended by adding the following article:

**Article XII. Development Impact Tax for Public School Improvements.**

**52-87. Definitions.**

In this Article all terms defined in Section 52-47 have the same meanings, and the following terms have the following meanings:

*Development impact tax for public school improvements* means a tax imposed to defray a portion of the costs associated with public school improvements that are necessary to accommodate the enrollment generated by the development.

*Public school improvement* means any capital project of the Montgomery County Public Schools that adds to the number of teaching stations in a public school.

*High-rise [[residential]] unit [[means]]* includes any dwelling unit located in a multifamily residential or mixed-use building that is taller than 4 stories, and any 1-bedroom garden apartment.

**52-88 Findings; purpose and intent.**

(a) The amount and rate of growth will place significant demands on the County to provide public school improvements necessary to support and accommodate that growth.

(b) The County, through its adoption of the Capital Improvements Program, indicates its commitment to provide public school improvements.

(c) The County has determined that a combination of approaches will be necessary to fully achieve the level of public school improvements needed to accommodate growth. Thus, the County proposes to fund a program of public school improvements through development impact taxes to support new growth in the County.

(d) Imposing a development impact tax that requires new development to pay a share of the costs of public school improvements necessitated by

that development in conjunction with other public funds is a reasonable method of raising the funds to build improvements in a timely manner.

(e) The development impact tax for public school improvements will fund, in part, the improvements necessary to increase public school capacity, thereby allowing development to proceed. Development impact taxes authorized in this Article will be used exclusively for public school improvements.

(f) In order to assure that the necessary public school improvements are constructed in a timely manner, the County intends to make sufficient funds available to construct the public school improvements.

(g) The County retains the power to determine the public school improvements to be funded by development impact taxes; estimate the cost of such improvements; establish the proper timing of construction of the improvements to meet school capacity needs as identified in the Annual Growth Policy; determine when changes, if any, may be necessary in the County CIP; and do all things necessary and proper to accomplish the purpose and intent of this Article.

(h) The County intends to further the public purpose of assuring that adequate public school capacity is available in support of new development.

(i) The County's findings are based on the adopted or approved plans, planning reports, capital improvements programs identified in this Article, and specific studies conducted by Montgomery County Public Schools.

(j) The County intends to impose development impact taxes for public school improvements until the County has attained build-out as defined by the General Plan.

**52-89. Imposition and applicability of tax.**

(a) An applicant for a building permit for a residential development must pay a development impact tax for public school improvements in the amount and manner provided in this Article before a building permit is issued for any residential development in the County unless:

(1) a credit for the entire tax owed is allowed under Section 52-93; or

(2) an appeal bond is posted under Section 52-56.

(b) Except as expressly provided in this Article, this tax must be levied, collected, and administered in the same way as the tax imposed under Article VII. All provisions of Article VII apply to this tax unless the application of that Article would be clearly inconsistent with any provision of this Article. This tax is in addition to the tax imposed under Article VII, and any tax paid under this Article must not be credited against any tax due under Article VII.

(c) The tax under this Article must not be imposed on:

(1) any Moderately Priced Dwelling Unit built under Chapter 25A or any similar program enacted by either Gaithersburg or Rockville,

[(2) any Productivity Housing unit, as defined in Section 25B-17(j), which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A;]]

[(3)] (2) any other dwelling unit built under a government regulation or binding agreement that limits for at least 15 years the price or rent charged for the unit in order to make the unit affordable to households earning less than [[50%]] 60% of the area median income, adjusted for family size;

[(4)] (3) any Personal Living Quarters unit built under Sec. 59-A-6.15, which meets the price or rent eligibility standards for a

moderately priced dwelling unit under Chapter 25A;

~~[(5)]~~ (4) any dwelling unit in an Opportunity Housing Project built under Sections 56-28 through 56-32, which meets the price or rent eligibility standards for a moderately priced dwelling unit under Chapter 25A; and

~~[(6)]~~ (5) any development located in an enterprise zone designated by the State.

(d) The tax under this Article does not apply to:

(1) any reconstruction or alteration of an existing building or part of a building that does not increase the number of dwelling units of the building; and

(2) any building that replaces an existing building on the same site or in the same project (as approved by the Planning Board or the equivalent body in Rockville or Gaithersburg) to the extent of the number of dwelling units of the previous building, if:

(A) construction begins within one year after demolition or destruction of the previous building was substantially completed; or

(B) the previous building is demolished or destroyed, after the replacement building is built, by a date specified in a phasing plan approved by the Planning Board or equivalent body.

However, if in either case the tax that would be due on the new, reconstructed, or altered building is greater than the tax that would have been due on the previous building if it were taxed at the same time, the applicant must pay the difference between those amounts.

(e) If the type of proposed development cannot be categorized under the

residential definitions in Section 52-47 and 52-87, the Department must use the rate assigned to the type of residential development which generates the most similar school enrollment characteristics.

**52-90. Tax rates.**

(a) The Countywide rates for the tax under this Article are:

<i>Dwelling type</i>	<i>Tax per dwelling unit</i>
Single-family detached <del>[[residential]]</del>	<del>[[3920]]</del> 8000
Single-family attached <del>[[residential]]</del>	<del>[[3220]]</del> 6000
Multifamily <del>[[residential]]</del> (except high-rise)	<del>[[1960]]</del> 4000
High-rise <del>[[residential]]</del>	<del>[[770]]</del> 1600
Multifamily senior <del>[[residential]]</del>	\$0

(b) The tax on any single-family detached or attached dwelling unit must be increased by \$1 for each square foot of gross floor area that exceeds 4500 square feet, to a maximum of 8500 square feet.

(c) Any Productivity Housing unit, as defined in Section 25B-17(j), must pay the tax at 50% of the otherwise applicable rate.

~~[[b)]]~~ (d) The County Council by resolution, after a public hearing advertised at least 15 days in advance, may increase or decrease the rates set in this Section.

~~[[c)]]~~ (e) The Director of Finance, after advertising and holding a public hearing as required by Section 52-17(c), must adjust the tax rates set in or under this Section on July 1 of each odd-numbered year by the annual average increase or decrease in the Consumer Price Index for all urban consumers in the Washington-Baltimore metropolitan area, or any successor index, for the two most recent calendar years. The Director must calculate the adjustment to the nearest multiple of one dollar. The

Director must publish the amount of this adjustment not later than May 1 of each odd numbered year.

**52-91. Accounting; use of funds.**

(a) The Department of Finance must maintain and keep adequate financial records that:

(1) show the source and disbursement of all revenues under this Article;

(2) account for all funds received; and

(3) assure that the funds are used exclusively for the public school improvements listed in subsection (d).

(b) Interest earned on revenues under this Article must be used solely for public school improvements.

(c) The Department of Finance must annually issue a statement for this account.

(d) Revenues raised under this Article may be used to fund any:

(1) new public elementary or secondary school;

(2) addition to an existing public elementary or secondary school that adds one or more teaching stations; or

(3) modernization of an existing public elementary or secondary school to the extent that the modernization adds one or more teaching stations.

**52-92. Refunds.**

(a) Except as provided in this Section, Section 52-54 applies to any petition for a refund of taxes paid under this Article. Subsections 52-54(a)(1) and (d) do not apply to taxes paid under this Article.

(b) Any person who has paid a tax under this Article may apply for a refund of the tax if the County has not appropriated the funds for public school

improvements of the types listed in Section 52-91(d) by the end of the sixth fiscal year after the tax is collected.

- (c) The Director of Permitting Services must investigate each claim and hold a hearing at the request of the petitioner. Within 3 months after receiving a petition for refund, the Director must provide the petitioner, in writing, with a decision on the refund request. The Director must specify the reasons for the decision, including, if a refund is claimed under subsection (b), a determination of whether funds collected from the petitioner, calculated on a first-in-first-out basis, have been appropriated or otherwise formally designated for public school improvements of the types listed in Section 52-91(d) within 6 fiscal years.

### **52-93 Credits.**

- (a) Section 52-55 does not apply to the tax under this Article. A property owner must receive a credit for constructing or contributing to an improvement of the type listed in Section 52-91(d), including costs of site preparation. A credit must not be allowed for the cost of any land dedicated for school use, including any land on which the property owner constructs a school.
- (b) If the property owner elects to make a qualified improvement, the owner must enter into an agreement with the Director of Permitting Services, or receive a development approval based on making the improvement, before any building permit is issued. The agreement or development approval must contain:
- (1) the estimated cost of the improvement, if known then,
  - (2) the dates or triggering actions to start and, if known then, finish the improvement,



- (3) a requirement that the property owner complete the improvement according to Montgomery County Public Schools standards, and
- (4) such other terms and conditions as MCPS finds necessary.

(c) MCPS must:

- (1) review the improvement plan,
- (2) verify costs and time schedules,
- (3) determine whether the improvement is a public school improvement of the type listed in Section 52-91(d),
- (4) determine the amount of the credit for the improvement, and
- (5) certify the amount of the credit to the Department of Permitting Services before that Department or a municipality issues any building permit.

- (d) An applicant for subdivision, site plan, or other development approval from the County, Gaithersburg, or Rockville, or the owner of property subject to an approved subdivision plan, development plan, or similar development approval, may seek a declaration of allowable credits from MCPS. MCPS must decide, within 30 days after receiving all necessary materials from the applicant, whether any public school improvement which the applicant has constructed, contributed to, or intends to construct or contribute to, will receive a credit under this subsection. If during the initial 30-day period after receiving all necessary materials, MCPS notifies the applicant that it needs more time to review the proposed improvement, MCPS may defer its decision an additional 15 days. If MCPS indicates under this paragraph that a specific improvement is eligible to receive a credit, the Director of Permitting Services must allow a credit for that improvement. If MCPS cannot or

chooses not to perform any function under this subsection or subsection (c), the Department of Permitting Services must perform that function.

(e) The Director of Finance must not provide a refund for a credit which is greater than the applicable tax. [[If, however, the amount of the credit exceeds the amount of the tax due, the property owner may apply the excess credit toward any tax imposed under this Article on any other building permit for development with the same ownership. In this Section, a property has the same ownership as another property if the same legal entity owns at least 30% of the equity in both properties.]]

(f) Any credit issued under this Section expires 6 years after the Director certifies the credit.

**52-94. School Facilities Payment.**

(a) In addition to the tax due under this Article, an applicant for a building permit for any building on which a tax is imposed under this Article must pay to the Department of Finance a School Facilities Payment if that building was included in a preliminary plan of subdivision that was approved under the School Facilities Payment provisions in the Annual Growth Policy.

(b) The amount of the Payment for each building must be calculated by multiplying the Payment rate by the latest per-unit student yield ratio for that level of school and for that type of dwelling unit and geographic area issued by MCPS.

(c) The Payment rate is \$12,500 per student, unless modified by Council resolution. The Council by resolution, after a public hearing advertised at least 15 days in advance, may increase or decrease the Payment rate or set different rates for different types of housing unit.

(d) The Payment must be paid at the same time and in the same manner as

the tax under this Article, and is subject to all provisions of this Article for administering and collecting the tax.

- (e) The Department of Finance must retain funds collected under this Section in an account to be appropriated for MCPS capital improvements that result in added student capacity for the school cluster, or, if no cluster is established, another geographic administrative area, where the development for which the funds were paid is located.

**Sec. 2. Effective Date; Transition.**

- (a) This Act takes effect on [[September]] March 1, [[2003]] 2004, and the development impact tax for public school improvements imposed under Section 52-89, added by Section 1 of this Act, applies to any building for which an application for a building permit is filed on or after that date.

- [(b) Each taxpayer must pay the development impact tax for public school improvements at:

- (1) 50% of the rates set in Section 52-90, as inserted by Section 1 of this Act, for any building permit application filed between September 1, 2003 and December 31, 2003;
- (2) 75% of the rates set in Section 52-90 for any building permit application filed between January 1, 2004, and June 30, 2004; and
- (3) 100% of the rates set in Section 52-90 for any building permit application filed on or after July 1, 2004.

To the extent that any taxpayer pays a lower rate than that set in Section 52-90 because this subsection applies, any credit claimed under Section 52-93 must be reduced by the same ratio.]]

(b) The development impact tax for public school improvements does not apply to any residential building located in a Metro Station Policy Area or Town Center Policy Area if:

(1) a site plan which includes that building was approved by vote of the County Planning Board, or the equivalent body in any municipality, before May 1, 2003; and

(2) (A) a building permit is issued for that building before September 1, 2006; or

(B) if the building is part of a mixed use project, a building permit is issued for any building or structure in that project before March 1, 2005.

*Approved:*

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Michael L. Subin, President, County Council

Date

*Approved:*

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Douglas M. Duncan, County Executive

Date

*This is a correct copy of Council action.*

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Mary A. Edgar, CMC, Clerk of the Council

Date